IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
Second Appeal No. 230/2006
Subhash Waman Bhosale vs. Santoshkumar Narayan Malu and another

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Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's Orders.

CORAM : A.P. Lavande,J
DATE : 29.10.2007

Heard Mr. Amol Deshpande, learned counsel for the appellant.

By this second appeal, the appellant takes exception to the Judgment and decree dated 3rd August, 2005 passed by the Ad hoc Additional District Judge, Buldhana in Regular Civil Appeal No. 143/04 dismissing the appeal filed by the appellant against the Judgment and decree dated 7.7.2004 passed by the Joint Civil Judge, Jr. Dn., Malkapur in Regular Civil Suit No. 73/2001.

The appellant who is the original plaintiff filed the above suit against the respondent/ defendant seeking declaration and injunction in respect of the suit land. The plaintiff claimed easement by prescription. The trial court as well as the appellate Court held that the plaintiff had failed to prove that he had used the suit way openly, peaceably and as of right for the period of 20 years as required in

terms of Section 15 of the Easement Act.

Having heard the learned counsel for the appellant and having perused the records I find that the finding recorded by the trial court which has been confirmed by the appellate Court that the plaintiff has failed to prove the use of the suit way openly, peaceably and as of right for a period of 20 years prior to the institution of the suit cannot be said to be a perverse finding. In my opinion, the above finding has been recorded upon the correct appreciation of the evidence led by the parties and as such cannot be faulted. In any case, no substantial question of law is involved in the appeal. Hence, the appeal is summarily rejected.

Judge

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